

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-01-SJ-077
)	
VELOCITEL TOWERS, INC.)	NAL/Acct. No. 200232680001
F/k/a TowerCel, Inc.)	
)	
Antenna Structure Registration: 1221688)	FRN 0005-7959-35
)	

FORFEITURE ORDER

Adopted: February 6, 2002

Released: February 8, 2002

By the Chief, Enforcement Bureau:

I. Introduction

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) against VelociTel Towers, Inc. (“VelociTel”) for willful violations of Section 17.51(b) of the Commission’s Rules (“the Rules”).¹ The noted violations involve VelociTel’s failure to exhibit the required medium intensity obstruction lighting at an antenna tower.

2. On October 3, 2001, the Enforcement Bureau released a Notice of Apparent Liability for Forfeiture (“NAL”) against VelociTel in the amount of \$20,000.² VelociTel filed its response to the NAL on November 2, 2001.

II. Background

3. VelociTel owns an antenna structure (ASR # 1221688) located in Juncos, Puerto Rico. On August 2, 3 and 8, 2001, an agent from the Commission’s San Juan, Puerto Rico, Resident Agent Office (“San Juan”) observed that VelociTel did not exhibit medium intensity obstruction lighting at that antenna structure. The agent determined by consulting data bases that VelociTel is required to exhibit medium intensity obstruction lighting at that antenna tower.

4. In its August 23, 2001, response to a Notice of Violation (“NOV”) issued by San Juan on August 14, 2001, VelociTel stated that it would have the tower lighting repaired by September 7, 2001. On October 3, 2001, San Juan released the captioned NAL against VelociTel in the amount of \$20,000 for violation of Section 17.51(b) of the Rules. The NAL proposed a \$20,000 forfeiture rather the \$10,000 base amount for lighting violations³ on the basis of VelociTel’s history of noncompliance with the Commission’s Rules, as evidenced by an NOV issued to VelociTel on March 19, 2001, for another of its towers.⁴

¹ 47 C.F.R. § 17.51(b).

² *Notice of Apparent Liability for Forfeiture*, NAL Acct. No. 200132680001 (Enf. Bur., San Juan Office, released October 3, 2001).

³ *See* 47 C.F.R. § 1.80(b)(4).

⁴ *See* 47 U.S.C. § 503(b)(2)(D).

5. In its November 2, 2001, response to the NAL, VelociTel admits the violations but argues that the proposed forfeiture should be remitted or mitigated to no more than \$10,000. VelociTel asserts that its prompt remedial action demonstrates “good faith or voluntary disclosure”; that it plans to invest at least \$20,000 in an automatic alarm system designed to detect lighting outages; that the resources available for rapid deployment of an automatic alarm system will be reduced if VelociTel must pay the full forfeiture amount; and that investing in safety is a better use for “scarce resources” than payment of a forfeiture.

III. Discussion

6. The Enforcement Bureau assessed the proposed forfeiture amount in this case in accordance with Section 503 of the Communications Act of 1934, as amended (“Act”),⁵ Section 1.80 of the Rules,⁶ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). Section 503(b) of the Act⁷ requires that, in examining VelociTel’s response, the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

7. Section 17.51(b) of the Rules requires that medium intensity obstruction lighting be continuously exhibited upon antenna structures. It is undisputed that VelociTel did not comply with this rule.

8. We do not agree with VeociTel’s arguments for mitigating the forfeiture amount for its violations of Section 17.51(b). Remedial action taken by a licensee after notification of a violation -- such as the action already taken by VelociTel and VelociTel’s planned deployment of an automatic alarm system -- does not mitigate the forfeiture. *See generally KGVL, Inc.*, 42 FCC 2d 258, 259 (1973). VelociTel’s argument that payment of the full forfeiture amount would reduce the funds available for deployment of an automatic alarm system is not relevant. VelociTel does not claim that it is unable to pay the full forfeiture amount; indeed, such a claim would require supporting financial information, which VelociTel did not provide.

9. We find, however, upon review of the facts regarding the violations, that a reduction of the forfeiture amount to \$10,000 is warranted.

IV. Ordering Clauses

10. **ACCORDINGLY, IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁹ VelociTel **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for willful violation of the provisions of 17.51(b) of the Rules.

⁵ 47 U.S.C. § 503.

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁰ Payment may be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232680001 and FRN 0005-7959-35. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

12. **IT IS FURTHER ORDERED THAT** this Order shall be sent, by certified mail, return receipt requested, to Christopher G. Wood, Esq., Fleischman and Walsh, L.L.P., at 1400 16th Street, N.W., Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁰ 47 U.S.C. § 504(a).

¹¹ See 47 C.F.R. § 1.1914.